



Office of the Mayor and Council  
City of College Park  
8400 Baltimore Avenue, Suite 375  
College Park, Maryland 20740  
Telephone: (240) 487-3501

**NOTICE OF FINAL DECISION  
of the  
MAYOR AND COUNCIL  
of the  
CITY OF COLLEGE PARK**

RE: Case No. CEO-2021-02 Name: Beatriz Gamez

Address: 5002 Indian Lane, College Park, MD 20740

Enclosed herewith is a copy of the Resolution setting forth the action taken by the Mayor and Council of the City of College Park in this case on the following date:

December 7, 2021.

**CERTIFICATE OF SERVICE**

This is to certify that on December 10, 2021 attached Resolution was mailed, postage prepaid, to all persons of record.

**NOTICE**

Any person of record may appeal the Mayor and Council decision within thirty (30) days to the Circuit Court of Prince George's County, 14735 Main Street, Upper Marlboro, MD 20772. Contact the Circuit Court for information on the appeal process at (301) 952-3655.

Janeen S. Miller, CMC  
City Clerk

Copies to: Advisory Planning Commission  
City Attorney  
Applicant  
Parties of Record

PG Co. DER, Permits & Review Section  
M-NCPPC, Development Review Division  
City Public Services Department

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK  
ADOPTING THE RECOMMENDATION OF THE ADVISORY PLANNING  
COMMISSION REGARDING VARIANCE APPLICATION NUMBER CEO-2021-02,  
5002 INDIAN LANE, COLLEGE PARK, MARYLAND, TO DENY VARIANCES FROM  
SECTION 27-420(a) OF THE PRINCE GEORGE'S COUNTY ZONING ORDINANCE,  
AND §87-23 C OF THE CITY CODE, TO CONSTRUCT A 6-FOOT-HIGH, STOCKADE,  
FRONT YARD FENCE**

**WHEREAS,** the City of College Park ("City") has, in accordance with §25-303 of the Land Use Article, Annotated Code of Maryland, has adopted §87-23, "Fences", of the Code of the City of College Park ("City Code"), which establishes certain restrictions on the construction and reconstruction of fences on residential properties, including height and material restrictions on front yard fences; and

**WHEREAS,** pursuant to §15-19 of the City Code, the Advisory Planning Commission ("APC") is authorized to hear appeals from the provisions of Chapter 87, Building Construction, of the City Code; and

**WHEREAS,** the City is authorized by §87-23 J to grant a variance where by reason of an extraordinary situation or condition, the strict application of the Fence Ordinance would result in peculiar and unusual practical difficulty to, or an exceptional or undue hardship upon, the owner of the property; and a variance can be granted without substantial impairment of the intent, purpose and integrity of the Fence Ordinance; and where, if applicable, the variance is consistent with the Design Guidelines adopted for the locally designated Historic District, and the fence for which a variance is requested incorporates openness as much as is practicable, provided that the fence shall not be constructed of chain link unless the material is consistent with the surrounding neighborhood; and

**WHEREAS,** the City has, pursuant to §190-1 *et seq.* of the City Code, and in accordance with Section 27-924 of the Prince George's County Zoning Ordinance ("Zoning Ordinance"), enacted procedural regulations governing any or all of the following: departures from design and landscaping standards, parking and loading standards, sign design standards, and variances for lot size, setback and similar requirements for land within the corporate boundaries of the City, alternative compliance from landscaping requirements, certification, revocation, and revision of nonconforming uses, and minor changes to approved special exceptions; and

**WHEREAS,** the City Fence Ordinance, Chapter 87, §87-23 C prohibits fences in the front yard that exceed three feet in height and requires that fences be constructed of a material that incorporates openness such as wrought iron, split rail or picket; and

**WHEREAS,** Section 27-420(a) of the Zoning Ordinance, restricts fences in the front or side yard to four feet for lots of one acre or less; and

**WHEREAS,** on October 7, 2021, Beatriz Gamez ("Applicant"), submitted an application for a 3-foot front yard fence height and fence material variance from the provisions of



§87-23 C of the City Code and a 2-foot front yard fence height variance from the Zoning Ordinance Sec. 27-420-(a) for the property located at 5002 Indian Lane, College Park, Maryland ("Property"); and

**WHEREAS,** on November 4, 2021, the APC conducted a hearing on the merits of the variance, at which time the APC heard testimony and accepted evidence, including the staff report, exhibits, and the staff presentation with respect to whether the subject application meets the standards for granting an appeal set forth in §87-23 J and §190-1 *et seq.* of the City Code.

**WHEREAS,** based upon the evidence and testimony presented, the APC voted 6-0-0 to recommend that the variances be denied; and

**WHEREAS,** the Mayor and Council are authorized by §8-19 and §97-19 of the City Code to accept, deny or modify the recommendation of the APC, or to return the variance application to the Commission to take further testimony or reconsider its recommendation with respect to the variance request, and have reviewed the recommendation of the APC as to the application for a variance, and in particular have reviewed the APC's findings of fact and conclusions of law; and

**WHEREAS,** no exceptions have been filed.

**NOW THEREFORE,** the Mayor and Council are in agreement with and hereby adopt the findings of fact and conclusions of law of the APC with regard to CEO-2021-01 recommending denial of fence height and material variances as the criteria for the variances have not been met.

### **Section 1 Findings of Fact**

- 1.1 The property is located on the north side of Indian Lane east of Rhode Island Avenue.
- 1.2 The area of the property is 6,369 square feet.
- 1.3 The front (southwestern) property line measures 100 feet; the rear (northeastern) property line measures 103.6 feet; the side (western) property line measures 50.15 feet; and the other side (eastern) property line measures approximately 77.25.
- 1.4 The property is improved with a 1.5 story single-family home, a shed and a patio that wraps around the side and rear side of the house.
- 1.5 The Applicant installed a 6-foot high, solid, stockade fence running 25-feet along Indian Lane in the front yard and then along the entire eastern side property line. The stated reason for the fence is for security and to protect two large dogs. The Applicant received a permit from the County to install a 6-foot fence on August 9, 2021 (Permit 26822-2021-0), however the portion of the fence in the front yard was issued in error, as the height violates Section 27-420 (a) of the Zoning Ordinance.
- 1.6 A six-foot stockade fence in the rear yard can be constructed without a variance and would be sufficient to restrain even a large dog.
- 1.7 A Stop-Work Order and Notice of Violation from the City was posted on September 21, 2021, for failure to obtain a City permit.
- 1.8 The surrounding neighborhood is single-family residential.

- 1.9 There are three other 6-foot high, stockade fences located in the neighborhood:
- 9325 Rhode Island Ave. - Fence Variance granted in 2008.
  - 5003 Eutaw Place - Fence Variance granted in 2020.
  - 5000 Indian Lane - Fence permit granted in 1987, prior to the County front yard fence regulations being enacted in 2008.
- All three of these perimeter fences are for triangular shaped corner lots with two front yards per the County Code.

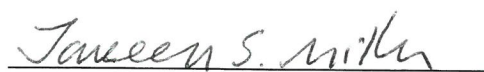
## **Section 2      Conclusions of Law**


- 2.1 The requirement that a specific parcel of land have exceptional narrowness, shallowness or shape, exceptional topographic conditions or other extraordinary situation or condition has not been met. There is nothing unusual about the size or shape of this parcel that would prevent the construction of a back yard fence that would be capable of restraining large dogs. This criterion requires a finding to be specific to a particular parcel of land. Thus the "extraordinary situation" cannot derive from a mistake by another entity, resulting in a permit issued in error.
- 2.2 The strict application of the Zoning Ordinance and City Code will not result in a peculiar and unusual practical difficulty or undue hardship to the owner. The Applicant states in her application that she is requesting the 6-foot stockade fence for privacy, safety, and security and to protect her two large dogs from other hostile dogs. However, the rear yard is available to be enclosed for the Applicant's two dogs without a variance. Extending the fence to the front yard exceeds the minimum necessary to resolve the claimed hardship. There was no other safety or security issue designated by the Applicant that would be resolved by a fence of this height in the front yard.
- 2.3 Granting this variance will adversely impact the intent, purpose, and integrity of the applicable county general plan or county master plan and the City's Fence Ordinance. The Fence Ordinance and County plans were enacted to preserve and protect the character of residential neighborhoods, to support open front yards in these areas, and to increase safety by allowing access to emergency personnel.
- 2.4 The property is not located in the regulated Old Town College Park Historic District.
- 2.5 The front yard fence, a 6-foot high, solid, wooden, stockade fence, does not incorporate openness or visibility.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the City of College Park to deny CEO-2021-02 for fence height and material variances.

**ADOPTED**, by the Mayor and Council of the City of College Park at a regular meeting on the 7<sup>th</sup> day of December 2021.

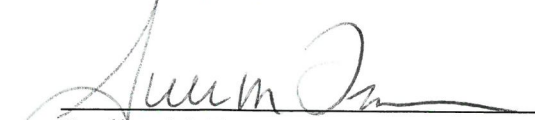
CITY OF COLLEGE PARK

  
Janeen S. Miller, CMC

  
Patrick L. Wojahn, Mayor

City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY



Suellen M. Ferguson  
City Attorney